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8 **UNITED STATES DISTRICT COURT**

9 **DISTRICT OF NEVADA**

10 CITY BAY CAPITAL LLC, a New York limited
 11 liability company,

12 Plaintiff,

13 v.

14 BH&G HOLDINGS, LLC, a Nevada limited
 15 liability company; BH&G ENTERPRISES, LLC,
 16 a Nevada limited liability company; GREEN
 17 MESA CAPITAL LLC, a Nevada limited
 18 liability company; MGP APEX 582
 19 DEVELOPMENT, LLC formerly known as
 20 GMC APEX 582 DEVELOPMENT, LLC, a
 21 Nevada limited liability company; MGP APEX
 22 582 GUARANTY, LLC formerly known as
 23 GMC APEX 582 GUARANTY, LLC, a Nevada
 24 limited liability company; MGP APEX 582
 25 MULTIFAMILY, LLC formerly known as GMC
 26 APEX 582 MULTIFAMILY, LLC, a Nevada
 27 limited liability company; MULTIGREEN
 28 PROPERTIES, LLC, a Nevada limited liability
 company; TRU DEVELOPMENT LLC, a
 Nevada limited liability company; and DOES 1
 through 50, inclusive,

Defendants.

CASE No.: 2:21-cv-01790-RFB-EJY

STIPULATION AND ORDER TO EXTEND DISCOVERY DEADLINES

[SEVENTH REQUEST]

Pursuant to Fed. R. Civ. P. 26(f) and Local Rule 26-4, City Bay Capital LLC (“Plaintiff”), by
 and through its attorneys of record, Jason M. Wiley, Esq. of the law firm Wiley Petersen; and
 Defendants BH&G Holdings, LLC, BH&G Enterprises LLC, Green Mesa Capital LLC, MGP Apex
 582 Development, LLC; MGP Apex 582 Guaranty, LLC; MGP Apex 582, Multifamily, LLC,

1 MultiGreen Properties, LLC, and Tru Development LLC (collectively, "Defendants"), by and through
2 their attorneys of record, Karen L. Bashor, Esq. and I-Che Lai, Esq. of the law firm Wilson Elser
3 Moskowitz Edelman & Dicker LLP and Bethany W. Kristovich, Esq. and James R. Salzmann, Esq. of
4 the law firm Munger, Tolles & Olson LLP, hereby stipulate to amend the May 12, 2023 Scheduling
5 Order (ECF No. 55) to extend the remaining discovery schedule by ninety (90) days.

6 **I. STATEMENT OF DISCOVERY COMPLETED**

7 The parties have engaged in the following discovery:

8 1. Plaintiff served several third parties with subpoenas duces tecum;

9 2. Defendants produced a Supplemental Declaration of Randy C. Norton and documents
10 in furtherance of jurisdictional discovery (ECF No. 12);

11 3. Plaintiff served in furtherance of jurisdictional discovery a subpoena to testify at a
12 deposition in a civil action and a subpoena duces tecum upon Ricardo Alberto Melero, with Mr.
13 Melero's appearance and production of documents scheduled for September 30, 2022, at 10:00 AM
14 in Orlando, Florida. Due (initially) to Hurricane Ian's impact and the parties' engagement in settlement
15 negotiations, Mr. Melero's deposition was postponed;

16 4. On March 9, 2023, Plaintiff took the deposition of Ricardo Alberto Melero;

17 5. On April 10, 2023, the parties, along with Trez Capital, submitted a Stipulated
18 Protective Order regarding documents to be disclosed by Trez Capital in furtherance of jurisdictional
19 discovery. (ECF No. 52). The Court issued its Order Granting Stipulated Protective Order that same
20 day. (ECF No. 53);

21 6. Plaintiff received and reviewed documents responsive to subpoenas duces tecum from
22 Trez Capital in furtherance of jurisdiction discovery on April 12, 2023;

23 7. Defendants propounded their First Set of Interrogatories to Plaintiff on August 18,
24 2023; and

25 8. On August 18, 2023, Defendants filed their Notice of Deposition of Plaintiff's FRCP
26 30(b)(6) Designee to take place on September 18, 2023, in Los Angeles, CA, together with a Request
27 for Documents.

1 **II. DISCOVERY THAT REMAINS TO BE COMPLETED**

2 The following discovery is still anticipated:

3 1. Initial disclosures by all parties pursuant to Fed. R. Civ. P. 26;

4 2. Deposition of Tim Deters, CEO of Defendant Tru Development;

5 3. Deposition of Randy Norton, CEO of Defendants MultiGreen Properties, LLC and

6 Green Mesa Capital LLC;

7 4. Deposition of Michael Zysman, Managing Principal of Plaintiff;

8 4. Disclosure of expert witnesses and depositions of expert witnesses;

9 5. Written discovery to Defendants Green Mesa Capital LLC, MGP Apex 582

10 Development, LLC; MGP Apex 582 Guaranty, LLC; MGP Apex 582, Multifamily, LLC, MultiGreen

11 Properties, LLC, and Tru Development LLC.

12 6. Additional third-party subpoenas duces tecum and for depositions (as needed); and

13 7. Potential motion practice to compel the production of documents (or otherwise
14 unsatisfactory discovery responses), may also be needed.

15 **III. THE REASONS WHY THE REMAINING DISCOVERY HAS NOT BEEN
16 COMPLETED**

17 This is the seventh request for an extension of the discovery deadlines. However, the parties'
18 first three requests related only to an extension of the jurisdictional discovery deadline. (ECF No. 54).
19 This is the fourth request to continue the complete set of discovery deadlines. *Id.* All prior requests for
20 extensions of discovery deadlines were completed through a stipulation between the parties.

21 Pursuant to LR 26-3, if the parties are requesting the extension of discovery deadlines within
22 21 days of the subject deadline, the request must be supported by a showing of good cause. Here, good
23 cause exists in order to extend the remaining discovery deadlines. The parties have been diligently
24 pursuing both fact and jurisdictional discovery as evidenced by the completed discovery outlined
25 above. However, on August 9, 2023, an involuntary petition pursuant to 11 U.S.C. § 303 was filed as
26 to Defendant BH&G Holdings, LLC in the United States Bankruptcy Court for the District of Nevada,
27 automatically staying the action as to that Defendant. (ECF No. 63). A status hearing on the bankruptcy
28 petition as to BH&G Holdings, LLC is currently set for September 12, 2023. An extension of the

1 current discovery deadlines will allow the parties to conduct the remaining discovery, while also
2 allowing for discovery pursuant to the outcome of the September 12th hearing and further bankruptcy
3 proceedings.

4 Additionally, the parties are currently attempting to resolve the pending jurisdictional
5 challenges through the motion work. (ECF Nos. 56, 57, 58, 60, 64 and 68). Hearing on this matter has
6 not yet been set. Finally, Plaintiff anticipates objecting to the previously noticed deposition of
7 Plaintiff's FRCP 30(b)(6) Designee as there is nothing on record to compel such a deposition to take
8 place as it is currently set.

9 Also pursuant to LR 26-3, a request made after the expiration of the subject deadline will not
10 be granted absent a showing that the failure to act was a result of excusable neglect. In evaluating
11 excusable neglect, the Court considers the following factors: (a) the reason for the delay and whether
12 it was in the reasonable control of the moving party; (b) whether the moving party acted in good faith;
13 (c) the length of the delay and its potential impact on the proceedings; and (d) the danger of prejudice
14 to the nonmoving party. *Pioneer Inv. Servs. Co. v. Brunswick Assocs.*, 507 U.S. 380, 395 S.Ct. 1489,
15 123 L.Ed.2d 74 (1993).

16 Here, the failure to act within the 21-day time period was justified. Plaintiff initially filed its
17 *Motion to Extend Discovery Deadlines* (ECF No. 67) within the 21-day window of the subject deadline
18 on August 28, 2023. Following this filing, the parties were able to come to an agreement on a
19 stipulation to extend the discovery deadlines and the motion was withdrawn on September 11, 2023.
20 (ECF No. 69). Furthermore, because this extension request is made jointly by the parties, there is no
21 danger of prejudice. Based on the foregoing, the good cause exists to extend the discovery deadlines
22 and excusable neglect exists as to why this request was not made sooner. This request is not sought
23 for delay or any other improper purpose.

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1 **IV. ~~PROPOSED~~ DISCOVERY SCHEDULE**

2 Except as indicated, the parties agree to the following proposed new deadlines:

3 EVENT	4 CURRENT DEADLINE	5 PROPOSED NEW DATE
6 Dispositive Motions	7 10/18/2023	8 1/15/2024
9 Discovery Cutoff	10 9/18/2023	11 12/15/2023
12 Joint Pretrial Order	13 11/15/2023, or 30 days 14 after resolution of 15 dispositive motions or 16 further order of the 17 Court	18 2/12/2024, or 30 days 19 after resolution of 20 dispositive motions or 21 further order of the 22 Court

23 DATED this 12th day of September 2023.

24 **WILEY PETERSEN**

25 */s/ Jason M. Wiley*

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35 *Attorneys for Plaintiff*

36 DATED this 12th day of September 2023.

37 **MUNGER, TOLLES & OLSON LLP**

38 */s/ Bethany W. Kristovich*

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53 *Attorneys for Defendants*

54 **IT IS SO ORDERED:**

55 **DATED: September 12, 2023**

56 *Elyna L. Zouchal*
57 **UNITED STATES MAGISTRATE JUDGE**